

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA GREAT
BUTTE DIVISION**

COTTONWOOD
ENVIRONMENTAL LAW CENTER,
et al.,

Plaintiffs,

v.

BIG SKY WATER AND SEWER
DISTRICT,

Defendant.

CV-20-28-BU-BMM

**ORDER REGARDING
TAXATION OF COSTS**

Big Sky Water and Sewer District (“Defendant”) submitted its Bill of Costs and supporting itemization and documentation on May 20, 2022 (Doc. 167.) Cottonwood Environmental Law Center, et al., (“Plaintiffs”) have filed no objections to Defendant’s Bill of Costs.

Federal Rule of Civil Procedure 54(d) grants trial courts the discretion to award costs to the prevailing party in litigation. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 565 (2012). Title 28 U.S.C. § 1920 limits to specific categories the costs and fees that a trial court may tax pursuant to its authority under Rule 54(d). *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 437 (1987).

Generally, a “district court need not give affirmative reasons for awarding costs; instead, it need only find that the reasons for denying costs are not sufficiently persuasive to overcome the presumption in favor of an award. The presumption itself provides all the reason a court needs for awarding costs.” *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003).

Accordingly, in the absence of any objections, and based upon documentation within the record, Federal Rule of Civil Procedure 54(d), and 28 U.S.C. §§ 1821 and 1920, costs are taxed in favor of Defendant and against Plaintiffs as outlined below.

ALLOWED COSTS AND FEES:

| | | |
|---|----------|-------------------|
| Witness fees | | |
| - Witness fee - Mark Cunnane | \$40.00 | \$550.79 |
| - Witness fee - Scott Buecker | \$40.00 | |
| - Witness fee - Ron Edwards | \$40.00 | |
| - Witness fee - Terry Campbell | \$40.00 | |
| - Mileage allowance - Mark Cunnane | \$109.40 | |
| - Mileage allowance - Scott Buecker | \$103.55 | |
| - Mileage allowance - Ron Edwards | \$98.28 | |
| - Mileage allowance - Terry Campbell | \$79.56 | |
| Fees for printed or electronically recorded transcripts necessarily obtained: | | \$3,185.30 |
| Costs for obtaining copies | | \$1,897.20 |
| TOTAL | | \$5,633.29 |

Section 1920(2) authorizes taxation of “fees for printed or electronically recorded transcripts necessarily obtained for use in the case.” 28 U.S.C. § 1920(2). Section 1920(4) allows taxation of costs for copies “necessarily obtained for use in the case.” 28 U.S.C. § 1920(4). Finally, § 1821 allows witness fees in the amount of 40.00 per witness per day, as well as mileage allowance for travel by personal vehicle. 28 U.S.C. § 1821(b) and (c)(2). Accordingly, the Court allows the above costs.

DISALLOWED COSTS AND FEES:

| | | | |
|---|--|----------|-----------------|
| Witness Fees | | | \$465.00 |
| - Subsistence allowance - Mark Cunnane | | \$155.00 | |
| - Subsistence allowance - Scott Buecker | | \$155.00 | |
| - Subsistence allowance - Ron Edwards | | \$155.00 | |
| TOTAL | | | \$465.00 |

Defendant’s listed “witness fees” include fees for subsistence for three witnesses who testified at trial. (Doc. 167 at 2.) Section 1821 of Title 28 only allows for subsistence when “an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.” 28 U.S.C. § 1821(d)(1). The witnesses here each participated in only one day of trial. Accordingly, the Court

will not tax to the Plaintiffs the subsistence allowance for Mark Cunnane, Scott Buecker, and Ron Edwards. (Doc. 167 at 2.)

In conclusion, costs are allowed in the amount of \$5,633.29 and disallowed in the amount of \$465.00.

DATED this 19th day of September, 2022.

A handwritten signature in blue ink that reads "Brian Morris".

Brian Morris, Chief District Judge
United States District Court